



United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

EPA Region 5 Records Ctr.



268326

Department of Natural Resources

Wisconsin Department of Natural Resources
101 S. Webster Street
P.O. Box 7921
Madison, Wisconsin 53707-7921

GENERAL NOTICE LETTER
URGENT LEGAL MATTER – PROMPT REPLY NECESSARY
CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

TO: ATTACHED LIST OF ADDRESSEES

Re: General Notice of Potential Liability and Request to Participate in Remedial Action Implementation Negotiations Relating to Operable Units 2-5 of the Lower Fox River and Green Bay Superfund Site, Green Bay, Wisconsin

Dear Sir or Madam:

This letter notifies you of potential liability, as provided by Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9607(a), as amended (CERCLA), that you may incur or may have incurred with respect to the above-referenced Site. This letter also notifies you of potential response activities at the Site, and asks that you perform and finance these activities.

This letter constitutes general notice of potential liability under CERCLA; it is not intended to serve as special notice under CERCLA Section 122(e)(1), 42 U.S.C. § 9622(e)(1). In this instance, EPA has decided that it is inappropriate to invoke the Section 122(e) special notice procedures. Due to the cooperative relationship between the Agencies and potentially responsible parties (PRPs) currently conducting design and field work at the Site, and the complexity of issues associated with a cleanup of this magnitude, we believe that using such special notice procedures would not facilitate an agreement between the Agencies and the PRPs and would not expedite the response action at the Site.

The decision not to use the special notice procedures does not preclude you from entering into discussions with the Agencies regarding your participation in response activities at the Site. This decision simply means that the EPA will not use the special notice procedures to govern future discussions. The Agencies encourage all PRP offers regarding settlement of this matter and cleanup of this Site.

GENERAL NOTICE OF POTENTIAL LIABILITY AND SUMMARY OF ACTIVITIES AT THE SITE

The United States Environmental Protection Agency (EPA) and the Wisconsin Department of Natural Resources (WDNR) have documented the release or threatened release of hazardous substances, pollutants and contaminants at the above-referenced Site. EPA and WDNR have spent public funds on actions to investigate such releases or threatened releases at the Site and have issued two Records of Decision that set forth the selected remedial action to address the releases or threatened releases. The two Records of Decision call for removal and off-site disposal of a significant volume of contaminated sediment containing polychlorinated biphenyls (PCBs) in excess of a 1 ppm remedial action level. Both Records of Decision include a contingent remedy feature which may allow partial capping at some areas of the Site, under specified conditions. In November 2006, EPA and WDNR proposed amendments to the Record of Decision that covers Operable Units 3, 4, and 5 at the Site. A Fact Sheet and Technical Memorandum concerning the proposed Record of Decision Amendment are posted on EPA's webpage for the Site (at <http://www.epa.gov/region5/sites/foxriver/>).

Under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a), Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973, as amended (RCRA), and other laws, potentially liable parties may be ordered to perform response actions deemed necessary by the government to protect the public health, welfare or the environment, and may be liable for all costs incurred by the government in responding to any release or threatened release at the Site. Such actions and costs may include, but are not limited to, expenditures for conducting a Remedial Investigation/Feasibility Study (RI/FS), conducting a Remedial Design/Remedial Action (RD/RA), and other investigation, planning, response, oversight, and enforcement activities. In addition, potentially liable parties may be required to pay for damages for injury to, destruction of or loss of natural resources, including the cost of assessing such damages.

EPA and WDNR have evaluated information in connection with the investigation of the Site. Based on this information, EPA and WDNR believe that you may be a PRP with respect to this Site. PRPs under CERCLA include current and former owners and operators of facilities that release hazardous substances to a site, persons who arranged for disposal or treatment of hazardous substances at a site, or persons who accepted hazardous substances for transport to a site.

By this letter, you are being notified of your potential liability with regard to this matter and you are encouraged to agree to perform certain response activities that are necessary at the Site. Some response activities have already been commenced. The remedial design and remedial action for Operable Unit 1 at the Site (Little Lake Butte Des Morts) are being performed under a 2003 Consent Decree with WTM I Co. and P.H. Glatfelter Co. The remedial design of the selected remedy for Operable Units 2-5 at the Site has begun under a 2004 agreement with Fort James Operating Company and NCR Corporation. An initial phase of the remedial action in

Operable Units 2-5 is currently being performed under a 2006 Consent Decree with NCR Corporation and Sonoco-U.S. Mills, Inc. EPA and WDNR are now seeking to have one or more PRPs enter into an agreement to implement all remaining elements of the remedial action for Operable Units 2-5 at the Site, consistent with the Records of Decision (and any amendments thereto). If such an agreement cannot be reached in the near term, EPA may issue an order requiring you to perform the remedial action, EPA and WDNR may take steps to finalize the proposed listing of the Site on the National Priorities List, or EPA and WDNR may conduct the remedial action. You may be liable under Section 107 of CERCLA for any response costs that EPA and WDNR incur in implementing the remedial action.

CERCLA Section 107(f), 42 U.S.C. § 9607(f), also provides that potentially liable parties may be required to pay for damages for injury to, destruction of or loss of natural resources caused by releases of hazardous substances at a site, including the cost of assessing such damages. WDNR is one of several state, federal, and tribal trustees for natural resources that have been injured by releases of PCBs at the Site, and EPA and WDNR have worked in coordination with the trustees in matters relating to the Site pursuant to a formal Memorandum of Agreement among those intergovernmental parties. The trustees' actions concerning the Site are coordinated through the Fox River/Green Bay Natural Resource Trustee Council, which is composed of delegates of the State of Wisconsin, the State of Michigan, the Menominee Indian Tribe of Wisconsin, the Oneida Tribe of Indians of Wisconsin, and the United States Departments of the Interior and Commerce, represented by the United States Fish and Wildlife Service. The trustees have performed significant natural resource damage assessment and restoration activities at the Site, as evidenced by a Restoration and Compensation Determination Plan published in 2000 and a Joint Restoration Plan published in 2003. Both of those documents are reproduced at the U.S. Fish and Wildlife Service's webpage for the Site (<http://www.fws.gov/midwest/FoxRiverNRDA/>). As provided by CERCLA Section 122(j), 42 U.S.C. § 9622(j), EPA has notified the trustees that this letter is being sent to initiate negotiations concerning performance of the remedial action, and the trustees have indicated that they will be prepared to participate in the negotiations to attempt to resolve the natural resource damages claim for the Site as part of an overall settlement. The trustees have requested that any responses to this Notice Letter address natural resource damages, as well as response costs and response actions at the Site.

ADMINISTRATIVE RECORD

Pursuant to CERCLA Section 113(k), EPA has established an administrative record that contains documents that form the basis of EPA's decision on the selection of the response action for the Site. That administrative record is available to the public for inspection at the following locations: (1) the EPA Records Center at the U.S. EPA Regional Office in Chicago; and (2) the WDNR offices in Green Bay and Madison. Copies of many of the documents in the administrative record file are also available for public inspection pursuant to 40 C.F.R. § 300.805 at the Appleton Public Library, the Brown County Library, the Oneida Community Library, and the Oshkosh Public Library.

INITIAL PRP RESPONSE AND GOOD FAITH OFFER

You are encouraged to contact EPA and WDNR within ten (10) business days of your receipt of this letter to indicate your willingness to participate in negotiations concerning performance of the remaining elements of the remedial action for Operable Units 2, 3, 4, and 5 at the Site and resolution of the government parties' claims for unreimbursed costs and natural resource damages. Notice Letter recipients who express a willingness to participate in such negotiations will be invited to attend an initial meeting with government representatives in March 2007. You would then have until April 1, 2007 to provide EPA and WDNR a written good faith settlement offer. You may respond individually or through a steering committee of multiple PRPs if such a committee has been formed. If EPA and WDNR do not receive a timely response, the Agencies will assume that you do not wish to negotiate a resolution of your potential liability for the Site.

A good faith settlement offer would need to include a written proposal demonstrating the PRPs' qualifications and willingness to conduct the remedial action. In order for your proposal to be considered a good faith offer, it must include the following elements:

1. A statement of willingness to conduct the remedial action for Operable Units 2, 3, 4, and 5.
2. A statement of willingness to negotiate an agreement consistent with the EPA's Model Remedial Design/Remedial Action Consent Decree (as set forth "Consent Decree Procedures" tab at the following website:
<http://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund/>).
3. A description of how the PRPs plan to proceed with the remedial action work.
4. A demonstration of the PRPs' technical capability to carry out the remedial action, including the identification of the firm(s) that may actually conduct the work or a description of the process they will use to select the firm(s).
5. The name, address, and phone number of the party or steering committee who will represent the PRPs in negotiations.

A good faith settlement offer also would need to address the government parties' claims for unreimbursed costs and natural resource damages. More specifically, it must include: (i) a statement of willingness by the PRPs to reimburse past costs and costs incurred in overseeing the PRPs' conduct of the remedial action; and (ii) a statement of willingness by the PRPs to pay the trustees' unreimbursed natural resource damages assessment costs and to fund and/or perform appropriate actions necessary to restore, replace, or acquire the equivalent of the injured natural resources at the Site.

If EPA and WDNR receive a good faith offer by April 1, 2007, the Agencies will seek to finalize an agreement by no later than July 15, 2007. If an agreement can not be reached within that

finalize an agreement by no later than July 15, 2007. If an agreement can not be reached within that timeframe, the government parties will be prepared to terminate negotiations.

EPA AND WDNR CONTACT PERSONS

Your response to this notice letter should be sent to:

James Hahnenberg
Remedial Project Manager
U.S. Environmental Protection Agency (SR-6J)
77 West Jackson Blvd.
Chicago, IL 60604

and

Greg Hill
State Project Coordinator
Wisconsin Department of Natural Resources
101 S. Webster St.
Madison, WI 53703

with copies to:

Richard Murawski
Associate Regional Counsel
U.S. Environmental Protection Agency (C-14J)
77 West Jackson Blvd.
Chicago, IL 60604

and

Fouad Dababneh
Remedial Enforcement Support Section
U.S. Environmental Protection Agency (SR-6J)
77 West Jackson Blvd.
Chicago, IL 60604-3590

and

Randall M. Stone
Senior Attorney
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044

and

Jerry L. Hancock
Wisconsin Department of Justice
P.O. Box 7857
Madison, WI 53707-7857


The factual and legal discussions contained in this letter are intended solely for notification and information purposes. They are not intended to be and cannot be relied upon as final EPA or WDNR positions on any matter set forth herein.

If you have any questions pertaining to this matter, please direct them to Randall Stone at the Department of Justice at (202) 514-1308 or Richard Murawski at U. S. EPA at (312) 886-6721.

Sincerely,



Thomas Short, Chief
Remedial Response Branch #2



Bruce Baker
Deputy Administrator, Division of Water

cc: James Hahnenberg (SR-6J)
Fouad Dababneh (SR-6J)
Richard Murawski (C-14J)
Record Center (SM-7J)
Douglas Dixon (OECA)
Joshua Epstein (OECA)
Randall Stone (U.S. DOJ)
Jerry L. Hancock (Wisconsin DOJ)
Gregory Hill (Wisconsin DNR)

**Recipients of General Notice of Potential Liability and Request to Participate in Remedial
Action Implementation Negotiations Relating to Operable Units 2-5 of the Lower
Fox River and Green Bay Superfund Site, Green Bay, Wisconsin**

Fort James Operating Company
c/o John N. Hanson
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Washington, DC 20005-3311

NCR Corporation
c/o J. Andrew Schlickman
Sidley Austin Brown & Wood
Bank One Plaza
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Appleton Papers Inc.
c/o Paul J. Karch
Vice President
Appleton Papers Inc.
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c/o Patrick H. Zaepfel
Meyer, Unkovic & Scott, LLP
110 East King Street
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Menasha Corporation
c/o Linda L. Rockwood
Faegre & Benson LLP
3200 Wells Fargo Center
1700 Lincoln Street
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Sonoco-U.S. Mills, Inc.
c/o Thomas R. Gottshall
Haynsworth Sinkler Boyd, P.A.
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Riverside Paper Corporation
c/o Kevin W. Buckley
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